



February 6, 2023

The Inland Ports and Navigation Group (IPNG) and Northwest RiverPartners (NWRP) have grave concerns regarding the ongoing mediation of the Columbia River System Operations (CRSO) litigation facilitated by the Federal Mediation and Conciliation Service (FMCS) at the behest of the White House Council on Environmental Quality (CEQ). Collectively, our organizations represent thousands of ratepayers, agriculture interests, irrigators, and communities that sprouted from the federal government's investments and infrastructure commitments to the region.

Historically, the process used to advance science, policy formation, and stakeholder engagement regarding the CRSO and Pacific Northwest salmon has resided within National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). The ESA requires that the CRSO be operated in a manner that does not jeopardize the continued existence of protected salmonid and other listed species, and the NEPA review process is designed to ensure that standard is met. Significantly, the NEPA process establishes the values particular actions would contribute toward salmon survival and places those values within the broader context of other societal priorities and congressionally-authorized system operations. The stated purpose of the FMCS/CEQ mediation is to reach a "consensus" resolution to the decades-long litigation regarding the CRSO NEPA process.

After nearly 15 months of this process, however, it is becoming increasingly clear that reaching true consensus is not only eluding participants but may not even be the goal of the discussions. Rather, the mediation appears focused on creating a venue – without meaningful public and stakeholder input, transparency, or third-party accountability and validation – to advance predetermined outcomes, including in particular, the removal of the Lower Snake River Dams.

Dam removal remains central to the discussions despite the "lack of precise measures or quantitative estimates of the magnitude of biological benefit." This lack of evidence, however, has not diminished the "confidence" of proceeding down this course despite the undisputed and devastating economic, climate, environmental, and sociological consequences dam removal would unleash on the region.

The most recent CRSO salmon recovery plan is derived from a \$40M NEPA and Biological Opinion process. Federal agencies held 16 public meetings, conducted two webinars, and received more than 400,000 comments from tribes, state and local governmental agencies, nongovernmental organizations, stakeholders, and the general public. After the scope was established, the action agencies considered an additional 59,000 comments, held eleven more public meetings, and sought input from 30 "cooperating agencies" from across the region. These documents determined that dam breaching was NOT warranted in order to avoid jeopardy under the ESA.

The current FMCS/CEQ process has had exactly zero meetings that allowed for meaningful, transparent participation by the general public. For those of us who are able to participate, that participation has been relegated in a way so as to not allow our meaningful input on both procedural and substantive questions of great concern and impact to the residents of the Pacific Northwest. IPNG and NWRP were excluded from negotiations concerning the terms of the stay agreement, which dictate the scope of the mediation. Further, our efforts to ensure that all topics delineated by the scope, especially related to

“delivering affordable and reliable clean power” and “meeting the many resilience needs of stakeholders across the region,” have received minimal response.ⁱ

IPNG and NWRP have continued to participate in the mediation process in good faith to the extent permitted. Unfortunately, it has become clear that our input is not being heard in the mediation context, leading to more serious concerns that a small group of stakeholders is seeking to prescribe decisions for our entire region regarding our climate response, electricity rates, transportation, grid reliability, food and energy security, and the future of river dependent communities without the full opportunity of affected stakeholders to participate.

It is also concerning that the U.S. Government appears to be taking the position that the science is settled on the subject of salmon and dam removal even though the 2022 “Rebuilding Interior Columbia Basin Salmon and Steelhead” (NOAA report) “lack[s] precise measures or quantitative estimates of the magnitude of biological benefit” precisely because the conclusion is so controversial and contested within the scientific community. The NOAA report, in determining that dam breaching is necessary to improve conditions for fish, relies on a theory called “delayed” or “latent mortality”, a notion that was even questioned as part of the 2020 Phase II Report by the Columbia Basin Partnership Task Forceⁱⁱⁱ. Despite the federal government’s own acknowledgement that the science is unsettled, the FMCS/CEQ process has staked the claim that the “science is non-negotiable.”

In short, it is our observation that the FMCS/CEQ process is on a trajectory to develop a “dam removal” plan, not consensus on a “salmon recovery” plan. Furthermore, the current FMCS/CEQ process has not been placed within the appropriate context of other policy objectives such as reducing carbon emissions in the energy sector, decarbonizing transportation, addressing global food security, meeting our international trade objectives, highlighting environmental justice concerns, and ensuring economic development. Our attempts to remedy those shortcomings have gone largely unheeded or ignored. We write to you out of concern that our region’s complex and myriad interests and needs are being left out of this discussion and time is running short to remedy the situation.

We are also concerned that different guidelines are being applied to FMCS/CEQ process participants regarding engagement in policy discussions and advocacy outside of the process. CEQ has touted process integrity and creating a forum where participating stakeholders can feel open to discuss challenging topics as reasons for participants to not engage other federal policymakers, members of Congress, or stakeholders not party to the discussions. While we have sought to abide by that request up to this point, it recently came to light that this standard is being unequally applied.

In short, many of our region’s complex and myriad interests and needs are being left out of this discussion and time is running short to remedy the situation.

ⁱ NOAA Fisheries “Rebuilding Interior Columbia Basin Salmon and Steelhead,” September 30, 2022, p. 24

ⁱⁱ Exhibit 2 of the stay order agreed to by plaintiffs and defendants articulates four objectives for the Biden Administration’s engagement on Columbia River Basin related policy matters: “The Biden Administration is committed to supporting development of a durable long-term strategy to [1] restore salmon and other native fish populations to healthy and abundant levels, [2] honoring Federal commitments to Tribal Nations, [3] delivering affordable and reliable clean power, and [4] meeting the many resilience needs of stakeholders across the region.”

ⁱⁱⁱ “A Vision for Salmon and Steelhead Recovery”, Phase II Report, Columbia Basin Partnership Task Force, October 2020